IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 988 of 1999
in
SPECIAL CIVIL APPLICATION No 6210 of 1998

with

CIVIL APPLICATION No 7133 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

RAJNAGAR TEXTILE MILLS
Versus
RAVINDRANATH SURENDRANATH TALUKDAR

Appearance:
1. LETTERS PATENT APPEAL No. 988 of 1999
NANAVATI & NANAVATI for Appellant No. 1
MR HL RAVAL for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 07/03/2002

C.A.V. JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

1. This appeal under Clause 15 of the Letters Patent is preferred from the judgment dated 9.11.1998, whereby, the order of the Labour Court granting reinstatement with backwages to the respondent was modified so as to take care of the date of superannuation reached by him during the litigation. The appellant had also availed the remedy of first appeal before the Industrial Court which had rejected the appeal. Thus, this is the 4th round of litigation in which the issues of fact and objections against recovery of the dues are raised against a workman who was dismissed on 28.11.1984 and who had reached the age of superannuation on 19.4.1988. By now, the workman must have reached the age of 74.

2. The respondent-workman was dismissed on the basis of vague charges and, after a departmental enquiry and after extensive examination of the evidence on record by the Labour Court as well as the Industrial Court, it was found and held that the charges against the respondent were not proved and the dismissal was illegal. Accordingly, the respondent was ordered to be reinstated with full backwages and costs. However, it appears that it was contended before the learned single Judge that the date of birth of the respondent on the nomination form of provident fund being 19.4.1928, he was liable to retire on 19.4.1988 upon attaining the age of superannuation. Therefore, the orders of the lower Courts were clarified to mean notional reinstatement.

3. An attempt was made on behalf of the appellant to reagitate all the contentions and, after reappreciation of the whole evidence, to show that the original order of dismissal was justified. That attempt was unsuccessful

and the findings of fact could not be shown to be in any way perverse even with the help of limited and selected pieces of evidence sought to be referred on behalf of the appellant. It was, therefore, vehemently argued that the appellant was entitled to the protection under Section 22 (1) of the Sick Industrial Companies (Special Provisions) Act, 1985 and, on that ground, the impugned order of the Labour Court could not be enforced or implemented. The obvious fallacy of the argument is that the objections and difficulties in implementation of the impugned order cannot be agitated to reverse that order and, as fairly

conceded on behalf of the respondent, such defences would be available where the order is sought to be enforced. It was agreed in that context that the respondent shall not enforce the recovery of the amounts due under the impugned order till the objections raised by the appellant before the Labour Court in the pending recovery application of the respondent are decided. It was also agreed that the appellant would cooperate in the early disposal of the recovery application of the respondent and such recovery application would be disposed within two months.

4. In these circumstances, we do not deem it fit to dwell upon the controversy as to whether the appellants are entitled to stave off recovery of the amounts due to the respondent under the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985.

The appeal is, accordingly, dismissed awarding to the respondent Rs.1,500/- by way of costs. No order in the Civil Application.

Sd/-

(J.N.Bhatt, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)